

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Bruce Woods,
Petitioner

vs

Case No. 1:00cv803
(Spiegel, J.; Black, M.J.)

Wanza Jackson,
Respondent

ORDER

Petitioner, an inmate in state custody at the Warren Correctional Institution in Lebanon, Ohio, has filed through counsel a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On February 20, 2004, the Sixth Circuit remanded this action with instructions to develop the factual record regarding petitioner's entitlement to equitable tolling of the statute of limitations set for in 28 U.S.C. § 2244(d). (Doc. 39). This matter is before the Court on petitioner's second motion to expand the record pursuant to Rule 7 of the Rules Governing Section 2254 Cases in the United States District Courts, 28 U.S.C. foll. § 2254, (Doc. 61) and petitioner's motion for an evidentiary hearing (Doc. 62).

In his motion to expand the record, petitioner requests the inclusion of the deposition of petitioner's trial and appellate counsel, petitioner's prison records, petitioner's affidavit in support of his motion for a delayed appeal, and documents pertaining to petitioner's contact with the Public Defender's Office. Respondent has not filed an opposition to the motion. Accordingly, petitioner's motion to expand the record (Doc. 61) to include the items appended to the motion is hereby

GRANTED.

On July 1, 2005, petitioner moved for summary judgment on the equitable tolling issue. (Doc. 72). By definition petitioner's motion suggests that there are no material issues of fact in dispute which require resolution through an evidentiary hearing. In any event, the need for an evidentiary hearing may be obviated by expansion of the record under Rule 7, as petitioner has done in this case. *See Boyko v. Parke*, 259 F.3d 781, 790 (7th Cir. 2001). Accordingly, petitioner's motion for an evidentiary hearing (Doc. 62) is hereby DENIED because a hearing is not necessary in the absence of disputed facts and because it appears petitioner has adduced relevant evidence by the alternative means of expanding the record.

IT IS SO ORDERED.

Date: August 16, 2005
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s/Timothy S. Black
Timothy S. Black
United States Magistrate Judge

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